REMARKS

In response to the Final Office Action, dated March 22, 2007, Applicants submit the following remarks. Applicant further notes that a Notice of Appeal has been timely filed on September 24, 2007. The Appeal brief will be due or before November 24, 2007. Applicants submit these remarks in an effort to provide additional patentability arguments prior to filing of the Appeal brief.

Currently, claims 1-6, 8-17, 30 and 32 are pending with claims 1, 30 and 32 being independent. Claims 7, 18-29, 31 and 33-36 have been previously canceled without prejudice and/or disclaimer of subject matter. Applicant reserves the right to pursue such claims, as well as additional claim supported by disclosure of the subject application at a later time.

No new matter has been added. Each of the issues raised in the outstanding Final Office Action is addressed below.

35 U.S.C. 102

In the Final Office Action, the Examiner rejected claims 1, 3, 5-6, 8-17, 30, and 32 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,809,484 to Mottola et al. (hereinafter, "Mottola"). This rejection is respectfully traversed.

Claim 1 recites, *inter alia*, a method for providing funding to an individual by an investor, the method including steps of communicating a request for funding for an individual to one or more potential investors, associating said request for funding with a cost of a share, wherein a purchaser of said share receives an economic return comprising a percentage of said individual's income, purchasing said share by at least one of said potential investors at a purchase price, wherein at least a portion of said purchase price is forwarded to said individual as funding.

As understood by Applicant, Mottola relates to administering a plan for funding investments in education. (Abstract). Mottola's education investment plan includes a "unit investment trust" for such financing, where the trust is a pool of money for investing in a

portfolio of a predetermined number of students who are planning to pursue particular educational programs, wherein the student in exchange for the financing of their educations by the trust transfer to the trust predetermined portions of their earnings. (Col. 3, lines 42-47). The funds that are received from students are paid by the trust to its shareholders. (Col. 3, lines 47-51). The plan determines how much return can be generated by investments in educations of students in different fields of endeavor so that the plan can be sufficiently attractive to the investors. (Col. 5, lines 48-53). The return is determined based on several factors such as fields of study, predictions of incomes for different fields of study, rates of salary growth, periods of unemployment, drop-out rates. (Col. 5, lines 57-61). The plan also selects a predetermined number of students for participating in the plan to advise potential investors in whose educations the unit investment trust will be investing. (Col. 8, lines 53-67).

Contrary to the suggestion by the Examiner in the Final Office Action (see, Final Office Action, page 6), Mottola fails to disclose communicating a request for funding for an individual to one or more potential investors, as recited in claim 1. Instead, Mottola pools funds from a plurality of investors (Col. 3, lines 28-29) and determines a rate of return on the investment into students educations in particular fields of study by the unit investment trust (Col. 5, lines 48-53). Clearly, Mottola does not communicate a request for funding for an individual from investors. As such, this element of claim 1 is not disclosed in Mottola.

Further, Mottola's unit investment trust initially pools funds from investors, provides them with a rate of return, and then draws funds for education for a fixed number of students' education. This is different than associating the request for funding with a cost of share, as recited in claim 1. Mottola's trust prospectus advises investors of potential returns on the investment by the unit investment trust, but it fails to associate request for funding with a cost of investment by each particular investor or a cost of share. As such, Mottola fails to disclose this element as well.

As such, Mottola fails to disclose, teach or suggest all elements of claim 1. Hence, Mottola does not anticipate claim 1 and claim 1 should be allowed.

Claims 30 and 32 are not anticipated by Mottola for at least the reasons stated above with regard to claim 1. Thus, the rejection of claims 30 and 32 is respectfully traversed. The Examiner is requested to reconsider and withdraw this rejection of claims 30 and 32.

Dependent claims 2-6 and 8-17 are not anticipated by Mottola for at least the reasons stated above with regard to claim 1. However, Applicant hereby incorporates and reiterates below Applicant's arguments to the previous Office Action, as submitted on December 19, 2006.

While the dependent claims are also considered patentable for the above-noted reasons, Applicant submits that separate consideration of patentability for the dependent claims is respectfully requested. For example, Applicant notes that neither the cited prior art nor the prior art of record discloses the additional features recited in either of claims 2 and 4 (at least). The Examiner noted that column 3, lines 25-58 disclose such features. However, a review of this section does not appear to disclose either the auctioning of a share (claim 2) or the mentoring component (claim 4). This section of Mottola is set out below.

> "The education funding plan described herein relies on the pooling of funds from a plurality of investors or shareholders, to provide the necessary funds for financing the educations of a predetermined number of students in pre-selected educational programs (e.g., particular fields of study or particular educational institutions). Students selected for the plan have their educations financed by the investors in exchange for predetermined portions of the students' future earnings, after graduation and securing employment. In other words, the investors, in effect, purchase a portion of each student's future expected earnings resulting from the education financed by the investors.
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> Any desired mechanism can be used to form a pool of investors according to the invention. In the discussion that follows, the term "unit investment trust" is defined to mean a pool of money invested in a portfolio of particular students who are planning on pursuing particular educational programs, wherein the students, in exchange for the financing of their educations by the unit investment trust, transfer to the trust predetermined portions of their earnings. All funds received from students are paid out by the unit investment trust's trustee--e.g., a bank or trust company--to the shareholders in the unit investment trust, net of expenditures. Because the composition of the portfolio is preferably fixed, that is, the particular students participating in the education investment

> plan are preferably fixed, there is generally no continuing active management of the unit investment trust. A "unit investment trust" can include closed or open-ended investment companies (e.g., mutual funds), limited partnerships or other types of investment plans as appropriate."

Accordingly, Applicant is hard pressed to see either the auctioning feature or the mentoring component of Applicant's claimed invention.

In view of the arguments listed above, Applicant respectfully requests that the §102 rejection in view of Mottola be withdrawn.

35 U.S.C. 103(a)

In the Final Office Action, the Examiner rejected claims 2 and 4 as being unpatentable over Mottola in view of Official Notice. The Examiner stated that Mottola fails to disclose "wherein offering the shares for sale comprises auctioning the share, and wherein purchasing the share comprises submitting a highest purchase price" and "wherein the purchase price comprises the cost of the share and a mentoring capability of the purchases". (See, Final Office Action, page 5). The Examiner took Official Notice that "auctioning share is old and well known in the financial world, computer/date processing arts, and the online finance environment" and "characteristics of the purchaser can affect the purchase price of a stock, as it can be a motivating factor for a purchaser to purchase a certain stock." (Final Office Action, page 5). The Examiner stated that Mottola renders claims 2 and 4 obvious in light of the two Official Notices, respectively. Applicant traverses this rejection.

Claims 2 and 4 are patentable over Mottola for at least the reasons stated above with regard to claim 1. The two Official Notices fail to cure the deficiencies of claim 1. Specifically, Official Notices either by themselves or in various combinations with Mottola fail to disclose, teach, or suggest a method for providing funding to an individual by an investor, the method including steps of communicating a request for funding for an individual to one or more potential investors, associating the request for funding with a cost of a share, wherein a purchaser of the share receives an economic return comprising a percentage of the individual's income, as recited in claim 1.

Additionally, according to MPEP 2144.03:

> Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).
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> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

In the Final Office Action, the Examiner took Official Notice to "mentoring capability of the purchaser" without providing any proper evidentiary support for this element of claim 4. The Examiner referred to St. Petersburg Times article that allegedly shows purchase price of a stock being affected by a characteristic of the purchaser. However, this article fails to teach any mentoring capability of the purchaser, as recited in claim 4. As such, it was not appropriate for the Examiner to take Official Notice. MPEP 2144.03. Thus, claims 2 and 4 are patentable over various combinations of Mottola and two Official Notices. Thus, the rejection of claims 2 and 4 is respectfully traversed. The Examiner is requested to reconsider and withdraw this rejection of claim 2 and 4.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that all issues raised in the Final Office Action have been addressed and request favorable reconsideration of the subject application. Applicant also respectfully requests that all of the prior art rejections issued in the outstanding Final Office Action be withdrawn and that the subject application be allowed. Accordingly, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

After review of Applicant's present response, should the Examiner feel that issues still remain that impede the allowance of the subject application, Applicant invites the Examiner to call Applicant's below named representative directly to discuss such issues. Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 935-3000. All correspondence should be directed to our New York office address, which is given below.

No fees are believed due with this response. In the event that it is determined that additional fees are due, however, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. **50-0311**, Ref. No. **21822-005C**, Customer No. **35437**.

Respectfully submitted,

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